U.S. Department of Labor

Office of Administrative Law Judges
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Date Issued: March 20, 2000

Case No.: 1999-LHC-1548

OWCP No.: 06-172937

In the Matter of:

JAMES WILLIAMS,
Claimant

v.

COOPER/T.SMITH STEVEDORING
Employer

APPEARANCES:

JOHN D. GIBBONS, ESQ.
On Behalf of the Claimant

DOUGLAS L. BROWN, ESQ.
On Behalf of the Employer

BEFORE: RICHARD D. MILLS
Administrative Law Judge

DECISION AND ORDER - AWARDING BENEFITS

This proceeding involves a claim for benefits under the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901, et seq., (the "Act") and the regulations promulgated thereunder. This claim is brought by James Williams, Claimant, against his former employer, Cooper/T. Smith, Employer. A hearing was held in Mobile, Alabama on August 17, 1999 at which time the parties were represented by counsel and given the opportunity to offer testimony and

documentary evidence and to make oral argument. The following exhibits were received into evidence:

1) Joint Exhibit No. 1;

2) Claimant's Exhibits Nos. 1-6; and

3) Employer's Exhibits Nos. 1-12.[1]

Upon conclusion of the hearing, the record remained open for submission of written closing arguments which were received by both parties. This decision is being rendered after having given full consideration to the entire record.

Stipulations

After evaluation of the entire record, the Court finds sufficient evidence to support the following stipulations:

(1) Jurisdiction is not a contested issue. Claimant's injury occurred while he was working as a longshoreman in the hold of a vessel berthed at the Alabama State Docks in the Port of Mobile. Employer is engaged in the stevedoring business.

(2) Date of injury/accident: Tuesday, April 29, 1997;

(3) That the injury was in the course and scope of employment;

(4) That there was an employer/employee relationship existing at the time of the alleged injury;

(5) That the date the Employer was notified of the injury was timely;

(6) That the Notice of Controversion was filed timely;

(7) That an informal conference was held on February 17, 1999;

(8) That Claimant's average weekly wage at the time of injury was $1,121.74.

(9) Nature and extent of disability:

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[1] The following abbreviations will be used in citations to the record: JX - Joint Exhibit, CX - Claimant's Exhibit, RX - Employer's Exhibit, and TR - Transcript of the Proceedings.

(a) Temp. total disability from April 30, 1997 to disputed.

(b) Benefits paid? Yes from April 30, 1997 to March 29, 1998; 47.71 weeks at $747.92 per week. Total paid $35,681.69.

(c) Medical benefits paid? Yes.

(10) Permanent disability: Yes

(a) Percentage 10% PPD to right leg.

(b) Benefits paid? Yes from March 30, 1998 to October 7, 1998; 28.8 weeks at $747.82 per week. Total paid $21,537.21.

(11) Date of maximum medical improvement: March 20, 1998.

(12) Unresolved issues:

(a) Whether Employer has paid all temporary and permanent disability benefits due?

(b) If not, whether Claimant is permanently and totally disabled?

(c) If Claimant is not PTD, whether he is entitled to further TTD benefits and , if so the extent of the additional period of TTD.

(d) The date on which the availability of suitable light-duty work was shown.

(e) Interest and fees.

Issues

The unresolved issues in this proceeding are nature and extent; interest and fees.

Summary of the Evidence

Testimonial Evidence

James Williams, Jr.

James Williams, Claimant, testified that he is the son of a farmer and attended school, although irregularly, through the eighth grade. He has neither received further education nor has he received a GED. He stated that he cannot read or write with proficiency and cannot do other than simple arithmetic. He added that he uses a checkbook to pay his bills. Claimant testified that after coming to Mobile in 1957, he worked in a laundromat before finding a job as a longshoreman in 1958 which he maintained until his job related injury in 1997. His longshoreman duties included driving and operating forklifts and cranes, using hand controls or hand and foot controls. He stated that occasionally, when the gang foreman was out, he would hire the men necessary for the day and keep records on who worked. These records were turned in to the timekeeper at the end of the day. He added that he kept track of the stevedores for which he worked and the hours worked for each, checking that his paycheck reflected the proper hours. Claimant testified that in 1971 he was charged with murder, but pleaded self-defense and received probation. He also received probation for running "shining" before he came to Mobile. He stated that his civil rights have been restored and he can vote. TR 10-19, 39-43, 47.

Claimant testified that his work related injury occurred when he was in the hatch loading a ship. He fell and injured his knee when his foot became entangled in a bale of wire on April 29, 1997. He was initially treated by Dr. Thomas who referred him to Dr. Hudgens, now his treating physician. Claimant testified that he underwent surgery and physical therapy. He stated that he was released, with restrictions, by Dr. Hudgens on March 20, 1998 and he returned to the hiring center and the union hall whereupon he was told that he could not return to work with his restrictions (no stooping, bending, or climbing a step ladder) as there was no light duty work available. He added the he loved working on the dock and would return there if he could. TR 19-22.

Claimant testified that his knee hurts and swells daily when he is active. He stated that he has fallen due to his knee giving out and uses a cane for support. He added that he has a small brace which he uses daily, but does use a larger brace occasionally. Claimant testified that he does not walk very much and protects his knee from bumping as much as possible. He stated that he occasionally shops for groceries with his wife, but usually must sit and wait for her to complete her shopping. He added that he sits "most all the time" and doesn't do much walking due to the pain and swelling in his knee. Claimant testified that he continues to see Dr. Hudgens and is sometimes given injections in his knee and takes pain medication morning and evening. He stated that Dr. Hudgens has informed him that a knee cap replacement would probably stop the pain in his knee. TR 22-27.

Claimant testified that he had met with Mr. Sanders, the vocational rehabilitation expert, at home on April 17, 1998 for about fifteen minutes of questioning. There was no testing done. He stated that when he asked Mr. Sanders if he could help him find a job, Mr. Sanders answered "no." He added that he first saw a list of jobs that Employer opined that he could perform at the informal conference in February 1999. He called Nyco Security Company and was informed that they weren't hiring. When he told them he had been on parole at one time they informed him that they could never hire him. He added that when he called Springhill Memorial hospital, they told he must have a high school diploma or GED to be considered. Claimant testified that when he called PMT Mattress

Manufacturing Company they told him that the job involved a lot of lifting and stooping. He stated that he attempted to reach each of the employers on the list, but some phone numbers were incorrect. Claimant testified that he did not feel that he would be able to give "a day's work for a day's pay" on a regular basis with any employer due to the constant pain in his knee. TR 28-30, 48.

Claimant testified that he did not apply for any light duty jobs from March 1998 until he phoned the aforementioned employers in July of 1999. He stated that he did not follow up on the jobs identified by Tommy Sanders on August 17, 1998. Claimant testified that he usually spends most of his days at the ILA Union Hall sitting with friends, drinking coffee and sometimes playing cards or dominoes. TR 32-34, 37, 38.

Nancy Crumpton

Nancy Crumpton testified that she has an undergraduate degree in special education, a master's degree in vocational evaluation and rehabilitation counseling, and a doctorate in adult education and rehabilitation services from Auburn University. Ms. Crumpton stated that she is a licensed professional counselor and a certified case manager. She added that she began working in a rehabilitation facility doing primarily rehabilitation work in 1975, but by 1983 was doing more mental health and rehabilitation work. After completing her doctoral work, she went into private practice and teaches at Troy State in Montgomery, Alabama. Ms. Crumpton testified that 25% of her work is litigation related and 75% is counseling. She also manages cases for the Department of Labor. TR 49-52.

Ms. Crumpton testified that she met with Claimant on July 9, 1999 to determine his level of vocational disability. She stated that prior to her meeting with Claimant she had reviewed records from Old Shell Orthopaedic Associates; Dr. Hudgens; the Mobile Infirmary Medical Center; Springhill Memorial Hospital and Wiley Christian, physical therapist. She added that Claimant stated that he had graduated from the seventh grade and then began working. He had no additional education and learned his job skills through on-the-job experience, working with Cooper Stevedore from 1957 through April 1997 operating a truck, backhoe, and crane. TR 52-54.

Ms. Crumpton testified that testing indicated that Claimant achieved at a third-grade level in reading and spelling and a fifth-grade level in arithmetic. She stated a third-grade reading level would allow one to have marginal comprehension in reading a newspaper and would allow for reading labels in a grocery, but would not allow for adequate comprehension in reading a manual or instructions unless there were diagrams included. She added that Claimant's skills were transferable to a occupation which involved physical activity such as construction, but were not transferable to a more sedentary type of occupation. Ms. Crumpton testified that, in summary, Claimant was functionally illiterate with ability to follow diagrams in the low average range. His perceptual ability was poor and his dexterity was low average. He has limited transferability of skills to lighter work, but could not return to his former job due to his restrictions. She stated that Claimant has a vocational disability of 74%, relating to his loss of access to jobs within his own market and loss of wages. She added that due to Claimant's knee and back pain she had concerns as to whether he could sustain employment in a competitive job, therefore, if such was the case he would be totally vocationally disabled. TR

54-56, 67.

Ms. Crumpton testified that she reviewed the jobs identified in the labor market surveys, but has not conducted such a survey herself. She stated that she had questions about several of them in terms of whether Claimant would be allowed to change positions, sit with his leg extended as needed or have to meet a production rate. She added that she did not see how he could sustain an eight-hour day, five day a week position as, even in activities at home, he has to rest for long periods after short periods of activity. Ms. Crumpton testified that the parking lot cashier appeared to be the most appropriate position, although she did question whether he could sustain a full week of work. She stated that a 30 hour week, as described in the position, would be better. She added that often parking lot positions are filled by members of the owner's family. Ms. Crumpton testified that she did not believe that traditional retraining was a reasonable option for Claimant. She stated that she did not refer Claimant to prospective employers in Mobile as she was not requested to do so. She added that she has placed people with educational levels equal to that of Claimant, but they were in special selective placements. Ms. Crumpton testified that she has placed people restrictions such as Claimant's. She stated that she was aware that the unemployment rate in Mobile was 4 to 5 percent, the lowest in two decades. TR 57-59, 61, 64, 65, 69, 70.

Ms. Crumpton testified that she did not find any reason to dispute the findings of the FCE. She acknowledged that she did not recall any restrictions on the number of hours a day Claimant could work, which she found surprising. She agreed that Claimant's restrictions were no crawling, kneeling, or crouched deep static (which is a complete squat executed to lift something or work on something). Ms. Crumpton testified that, if Claimant were allowed to alternate sitting, standing, and moving around with an assembly line at waist height and no stooping he could perform the job, but her concerns about having to meet some production standard remained. She stated that she believed that in the position of the food assembly worker, Claimant would have to carry things from the kitchen and would not be allowed to rest during peak serving hours. The assembler position she found satisfactory if Claimant would be allowed to alternate sitting, standing, and walking, but the packager's job should be eliminated as it would entail a ten hour day. She added that she was not more comfortable with the packager's position simply because Dr. Hudgens had approved it. Ms. Crumpton testified that she had concerns about the awning sewing job as the description did not include whether a knee pedal would be used. She stated that physically Claimant could maintain the dry cleaning job, but he would have difficulty understanding and relating any specific instructions. TR 72-81.

Ms. Crumpton testified that some employers are not willing to give an employee more than the usual morning and afternoon breaks. She stated that the best way to determine whether a work environment is suitable for an individual with restrictions is to visit the site and address the individual's specific needs. TR 86, 87.

Barney Hegwood

Barney Hegwood, vocational rehabilitation counselor employed by Jennifer Palmer and Company, testified that he holds a bachelor's degree in commercial science, a master's in vocational

guidance and counseling and has completed all but his dissertation for a doctorate in vocational, technical and occupational education. He is a licensed vocational rehabilitation counselor, professional counselor, a national certified counselor and a national certified rehabilitation counselor. Mr. Hegwood stated that Dr. Crumpton does not hold a license in rehabilitation counseling; she is not nationally board certified in that area. He added that fifty-percent of his practice involvedsexpert testimony (90% of that for the defense, 10% for the plaintiff) with the remainder encompassing contract work with the Department of Veterans Affairs and Louisiana Rehabilitation Services. TR 88-90, 106, 107, 123.

Mr. Hegwood testified that he met with Claimant on June 29, 1999 for approximately three hours. He stated that he evaluated Claimant using a scientific methodology acceptable under the Daubert decision which included questions regarding Claimant's background, financial status, education, military history, hobbies, interests, daily activities, prior and current medical summary and vocational test results. Mr. Hegwood testified that Claimant is illiterate, but functions through a system he has developed over time. His functional level is higher in math (4th grade) than in reading and spelling (3rd grade) and he is capable of executing practical work problems at a 7th grade level. TR 92-96.

Mr. Hegwood testified that, after reviewing Claimant's restrictions and his functional capacity evaluation, he identified positions that were within his capabilities.[2] He stated that Dr. Hudgens approved both lists of positions previously identified in February 1999 and those which he identified in June 1999. He added that Dr. Hudgens did qualify the rice packager's job. Mr. Hegwood testified that an FCE is usually based on an eight-hour day. He stated that he followed up with employers on numerous occasions to determine if openings were available back in 1998 and up until the present. He added that he contacted each employer directly and each would accommodate Claimant alternating sitting, walking and standing. Mr. Hegwood testified that at the time his report was written there were opening and applications were being accepted in each of the identified positions. He stated that Max Oil related that they had definitely hired someone between April 1998 and October 1998, but he acknowledged that the company said that Claimant would be precluded due to his felony conviction. Allright Parking stated that they hire on an ongoing basis but could not state whether they had hired anyone between April 1998 and October 1998. Park-It Car, Inc. also stated that they had hired individuals during that time period. He added that the parking lot cashier-attendant's position would be the ideal position for Claimant. Mr. Hedgwood testified that based on his first hand experience with Continental Can, he did not believe Ms. Crumpton's concerns about the jobs with Lerio and Carrington Foods were valid. He acknowledged that his experience with the can company was fifteen years ago. He stated that the low unemployment rate in Mobile would enhance Claimant's exposure to the labor market. TR 99-104, 109, 111.

Mr. Hegwood testified that Claimant's attitude was that he was going to be sixty years old

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[2]The Court notes that Dr. Hudgens answered yes, when asked if Claimant was physically capable of performing the identified positions. Dr. Hudgens qualified his approval of the packager position by noting "if not bending or squatting." RX-10; RX-12.

and he had worked for forty years and he was old and tired and with his knee injury he did not have much motivation to return to work. He stated that he found Claimant to be friendly, honest and straightforward. He added that the felony conviction Claimant had 25 years ago would effect his ability to attain a position as a security guard. TR 117-120, 129.

Mr. Hegwood testified that it was only after his interview with Claimant in July 1999, that he was given the full opportunity to review Claimant's limitations, prior history, capabilities, and educational level allowing for a full vocational evaluation. He stated that although the jobs do not have a production quota the employers are concerned about keeping up the work pace. He could not explain why PMT told Claimant that there was lifting involved in the identified position. He acknowledged that the mattress assembly position was stated to have a maximum lifting range from 20 to 25 pounds and the other jobs identified defined maximum lifting ranges from ten to twenty-five pounds. Mr. Hedgwood acknowledged that if Claimant's knee caused him pain daily to the point that he may fall and, thus, had to rest during the peak lunch time, he would not be able to maintain the essential function of the food server position. He reiterated that all the positions were approved by Dr. Hudgens. He added that Claimant would not be hired at Springhill Hospital as he does not have a GED, but stated that Claimant could work on getting the designation. Mr. Hedgwood testified that he could not state exactly when the aforementioned positions were available previously, but as of August 16, 1999, the counter clerk, food service, plastics and mattress assembler positions were open. He added that he could not say whether the positions identified by Mr. Sanders were open on February 15, 1999, the day of the report. Mr. Hedgood testified that Claimant would have difficulty completing employment applications. He explained that the jobs were available intermittently, sometimes available, sometimes not. Mr. Hedgwood acknowledged that he did not visit any of the job sites in his report, but gathered information over the phone, a standard practice. TR 132, 134, 138, 140, 142, 143, 145, 147, 149, 150.

Medical Evidence

Old Shell Orthopaedic Associates, P.C.

Dr. Hudgens initially saw Claimant on May 13, 1997, upon referral from Dr. Tom Taylor, complaining of swelling in his knee with pain when attempting to bend, squat or climb stairs. Dr. Hudgens diagnosed right patella contusion with chondromalacia. He ordered physical therapy, a knee support and Naprosyn. He stated Claimant should remain off work. CX-3 p. 1.

Dr. Hudgens subsequently saw Claimant on May 22, 1997; June 12, 1997; June 30, 1997 with the same diagnosis, and ordered an FCE. On July 24, 1997, Claimant returned with increased swelling and pain which had prohibited him from completing the FCE. Dr. Hudgens opined that Claimant's best chance of recovery would be with an excision of the pre-patella bursa. Claimant remained off work. Dr. Hudgens examined Claimant on August 19, 1997. Claimant awaited a second opinion from Dr. Rutledge on surgery. Claimant returned on September 5, 1997 with a report of concurrence by Dr. Rutledge, however Claimant's surgery was delayed due to hernia surgery. Claimant remained off work. CX-3 pp.2-4.

Dr. Hudgens next saw Claimant on October 17, 1997 and surgery was scheduled for October 27, 1997. Claimant visited Dr. Hudgens on November 1, 1997; November 21, 1997; December 15, 1997; and December 31, 1997 post-op with ongoing swelling. Claimant was prescribed Lodine for inflammation. Dr. Hudgens examined Claimant on January 12, 1998; February 3, 1998 and February 25, 1998 noting improvement in swelling, strength and pain. Dr. Hudgens ordered a specialized protonics brace and stated that Claimant could possibly undergo an FCE in three weeks. CX-3 pp. 5-8.

Claimant underwent an FCE on March 19, 1998. Recommendations included that Claimant should not lift from, or be required to assume, floor level positions and that he should be restricted in stair and ladder climbing. RX-5 p. 19.

Claimant returned to Dr. Hudgens on March 20, 1998 after completing the FCE. Dr. Hudgens restricted Claimant to modified duty with no squatting, stooping, or stair or ladder climbing. Claimant was returned to work as of that date. Dr. Hudgens stated that if Claimant was not able to perform modified duty, he may need retraining or a vocational assessment. He included that Claimant reached MMI as of March 20, 1998. On April 20, 1998, Dr. Hudgens saw Claimant noting that he was unable to return to his job as longshoreman due to his restrictions. Claimant continued to have problems with his knee and was prescribed Daypro and Lortab. CX-3 p. 9.

Claimant was examined by Dr. Hudgens on June 15, 1998; August 28, 1998; and November 30, 1998. Dr. Hudgens noted continued pain and swelling in Claimant's right knee. Dr. Hudgens next examined Claimant on January 29, 1999 complaining of pain in his right knee and lower back. Dr. Hudgens noted general tenderness across the lower lumbar area, but no neurological deficits. He prescribed Lodine, Wygesic and an injection of Depo Medrol. CX-3 pp. 9-11.

Other Evidence

Tommy Sanders, C.R.C.

Tommy Sanders, vocational consultant, performed a vocational assessment on Claimant. On August 17, 1998 he issued a report stating that based on that assessment and Claimant's restrictions a labor market survey indicated Claimant would qualify for positions in the Mobile Area. The following positions were identified: Parking lot booth cashier (Apcoa, approximately September 1, 1998, 24 hours per week at $5.60 per hour); fuel boot cashier (Max Oil, 24-30 hours per week at $5.60 per hour); security Guard (Pinkerton's Security, full time at $5.15 per hour); security guard (full and part time, $5.30 per hour). Mr. Sanders stated that these positions should be available to Claimant and within his residual employability profile based on him having a limited education and

no prior felony convictions/criminal past.[3] RX-6.

Findings of Fact and Conclusions of Law

The following findings of fact and conclusions of law are based upon the Court's observation of the appearance and demeanor of the witnesses who testified at the hearing and upon an analysis of the entire record, arguments of the parties, and applicable regulations, statutes, and case law. In evaluating the evidence and reaching a decision in this case, the Court has been guided by the principles enunciated in Director, OWCP v. Maher Terminals, Inc., 114 S. Ct. 2251 (1994) that the burden of persuasion is with the proponent of the rule. Additionally, as trier of fact, the Court may accept or reject all or any part of the evidence, including that of medical witnesses, and rely on its own judgment to resolve factual disputes or conflicts in the evidence. Todd Shipyards v. Donovan, 300 F.2d 741 (5th Cir. 1962). The Supreme Court has held that the "true doubt" rule, which resolves conflicts in favor of the claimant when the evidence is balanced, violates § 556(d) of the Administrative Procedures Act. Director, OWCP v. Greenwich Collieries, 114 S.Ct. 2251, 28 BRBS 43 (1994).

I. Nature and Extent of Disability

Disability under the Act means "incapacity as a result of injury to earn wages which the employee was receiving at the time of injury at the same or any other employment." 33 U.S.C. §902(10). Therefore, in order for a claimant to receive a disability award, he must have an economic loss coupled with a physical or psychological impairment. Sproull v. Stevedoring Servs. of America, 25 BRBS 100, 110 (1991). Under this standard, an employee will be found to either have no loss of wage earning capacity, a total loss, or a partial loss. The employee has the initial burden of proving total disability.

To establish a prima facie case of total disability, the claimant must show that he cannot return to his regular or usual employment due to his work related injury. See Manigault v. Stevens Shipping Co., 22 BRBS 332 (1989); Harrison v. Todd Pac. Shipyards Corp., 21 BRBS 339 (1988). It is not necessary that the work related injury be the sole cause of the claimant's disability. Therefore, when an injury accelerates, aggravates, or combines with the previous disability, the entire resulting disability is compensable. Independent Stevedore Co. v. Alerie, 357 F.2d 812 (9th Cir. 1966).

Although Claimant's injury was to a scheduled part of his body, he is not limited to the schedule, if he is totally disabled. Potomac Electric Power Company v. Director, OWCP, 449 U.S. 268 (1980).

It is undisputed that Claimant cannot return to his usual employment, thus Claimant has established a prima facie of total disability.

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[3]The Court notes that Dr. Hudgens approved all of the identified positions. RX-7.

Suitable Alternative Employment / Partial Disability

Total disability becomes partial on the earliest date that the employer establishes suitable alternative employment. Rinaldi v. General Shipbuilding Co., 25 BRBS 128 (1991). To establish suitable alternative employment, an employer must show the existence of realistically available job opportunities within the geographical area where the employee resides which he is capable of performing, considering his age, education, work experience, and physical restrictions, and which he could secure if he diligently tried. New Orleans Stevedores v. Turner, 661 F.2d 1031 (5th Cir. 1981); McCabe v. Sun Shipbuilding & Dry Dock Co., 602 F.2d 59 (3d Cir. 1979). For the job opportunities to be realistic, however, the employer must establish their precise nature, terms, and availability. Thompson v. Lockheed Shipbuilding & Constr. Co., 21 BRBS 94, 97 (1988). A failure to prove suitable alternative employment results in a finding of total disability. Manigault v. Stevens Shipping Co., 22 BRBS 332 (1989).

Employer argues that suitable alternative employment was established on the date of maximum medical improvement. Claimant argues that Employer has not established suitable alternative employment or, in the alternative, suitable alternative employment was established on July 15, 1999 after Mr. Hegwood met with Claimant.

This Court finds that suitable alternative employment was established on July 15, 1999. Thus, as of that date, Claimant's disability is partial.[4] Although Employer argues that Tommy Sanders identified positions which were within Claimant's restrictions on August 17, 1998, this Court finds that there is not sufficient evidence to determine with specificity when these positions would have been available to Claimant. Further, Employer argues that Barney Hegwood identified positions within Claimant's restrictions in a report dated February 11, 1999 and in a subsequent listing dated June 1999. However, Mr. Hegwood testified that it was only after his interview with Claimant on July 15, 1999 that he was given the full opportunity to review Claimant's limitations, prior history, capabilities and educational level allowing for a full vocational evaluation. The Court finds that based on Claimant's limitations, prior history, capabilities, and educational level the position of parking lot cashier (30 hours at $5.50 to $7.00 per hour) qualifies as suitable alternative employment. Thus, based on the aforementioned facts, this Court finds it reasonable to find that suitable alternative employment was established on July 15, 1999. Therefore, as of July 15, 1999, Claimant's disability is permanent partial.

The parties stipulated that Claimant's injury is a scheduled injury, and that, therefore, Claimant is only entitled to 10% permanent partial disability to his leg.[5] Claimant concedes that upon this Court's finding of suitable alternative employment Claimant is, thereafter, only entitled to the 10%

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[4]The Court notes that as Claimant reached MMI prior to this date, Claimant's disability is deemed permanent.

[5]See stipulations, Joint Exhibit 1.

disability to his right leg.[6]

ORDER

It is hereby **ORDERED, ADJUDGED AND DECREED** that:

(1) Employer/Carrier shall pay to Claimant compensation for temporary total disability benefits from April 30, 1997 until July 15, 1999, the date Employer established suitable alternative employment, based on an average weekly wage of $1,121.74.

(2) Employer/Carrier shall pay to Claimant compensation for his scheduled right leg injury, pursuant to Section 8(c)(2) & (19) of the Act, commencing on July 16, 1999 and continuing for 28.8 weeks (10% impairment) based on an average weekly wage of $1,121.74.

(3) Employer/Carrier shall pay to Claimant interest on any unpaid compensation benefits. The rate of interest shall be calculated at a rate equal to the coupon issue yield equivalent (as determined by the Secretary of the Treasury) of the average auction price for the auction of 52 week United States Treasury bills as of the date of this decision and order is filed with the District Director. See 28 U.S.C. §1961.

(4) Employer/Carrier shall be entitled to a credit for all payments of compensation previously made to Claimant.

(5) Employer/Carrier shall pay or reimburse Claimant for reasonable medical expenses, with interest in accordance with Section 1961, which resulted from the injury. See 33 U.S.C. §907.

(6) Claimant's counsel shall have twenty days from receipt of this Order in which to file a fully supported attorney fee petition and simultaneously to serve a copy on opposing counsel. Thereafter, Employer shall have twenty (20) days from receipt of the fee petition in which to file a response.

Entered this ____ day of _____, 2000, at Metairie, Louisiana.

RICHARD D. MILLS
Administrative Law Judge

RDM/cmh

[6]See Claimant's brief at page 13.